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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,995	08/01/2001	Hdei Nunoe	2000.023	5812
30636 7590 12/12/2007 FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038			EXAMINER ANYA, CHARLES E	
			ART UNIT 2194	PAPER NUMBER
			MAIL DATE 12/12/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/920,995

Applicant(s)

NUNOE, HDEI

Examiner

Charles E. Anya

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3/MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

  
WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

1. Claims 1-7 are pending in this application.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,308,255 B1 to Gorishek, IV et al.**

3. As to claim 1, Gorishek, IV teaches a method, comprising: determining a current processing mode of an executing software function (Steps 101/102/106 Col. 13 Ln. 55 – 65); when the current processing mode is a privileged processing mode, executing a direct program flow control instruction to directly access an instruction within software having the privileged processing mode (“...direct operating system calls...” Col. 12 Ln. 60 – 67, Step 104 (“...a normal host process...” Col. Col. 13 Ln. 55 – 65) and when the current processing mode is an unprivileged processing mode, executing an indirect program flow control instruction to cause execution of the instruction within software

having the privileged processing mode (“...thunk...” Col. 12 Ln. 42 – 67, Step 108 Col. 13 Ln. 65 – 67, Col. 14 Ln. 1 – 2).

4. As to claim 2, Gorishek, IV teaches the method of claim 1, wherein the direct program flow control instruction is a jump instruction (Step 104 Col. Col. 13 Ln. 55 – 65).

5. As to claim 3, Gorishek, IV teaches the method of claim 1, wherein the indirect program flow control instruction is an interrupt instruction (Col. 12 Ln. 42 – 67, Step 108 Col. 13 Ln. 65 – 67, Col. 14 Ln. 1 – 2).

6. As to claim 4, Gorishek, IV teaches the method of claim 1, wherein the software having the privileged processing mode is operating system software (Col.12 Ln. 30 – 41).

7. As to claim 5, Gorishek, IV teaches the method of claim 4, wherein the software having the privileged processing mode is kernel software (Col.12 Ln. 30 – 41).

8. As to claim 6, Gorishek, IV teaches a method, comprising: identifying a program code segment implementing an access to a memory area to be executed within a privileged processing mode; replacing the program code segment with a substitute code segment; wherein the substitute code segment includes program code to identify a

current processing mode of the program code segment (“...thunk... indirect operating system calls...” Col. 12 Ln. 42 – 67, “...emulation coprocessor interface code...” Col. 14 Ln. 1 – 2), execute a direct program flow control instruction if the current processing mode is the privileged processing mode (“...direct operating system calls...” Col. 12 Ln. 60 – 67, Step 104 Col. 13 Ln. 55 – 65), and execute an indirect program flow control instruction if the current processing mode is an unprivileged processing mode (“...thunk... indirect operating system calls...” Col. 12 Ln. 42 – 67, Step 108 Col. 13 Ln. 65 – 67, Col. 14 Ln. 1 – 2).

9. As to claim 7, Gorishek, IV teaches computer readable medium encoded with a software application, comprising: a software code implementing application functionality (Host Process 80/Foreign Application 82); and a smart system call into an operating system (operating system calls...” Col. 12 Ln. 42 – 67); wherein the smart system call comprises the software code to identify a current processing mode of a program code segment, execute a direct program flow control instruction if the current processing mode is a privileged processing mode (“...direct operating system calls...” Col. 12 Ln. 42 – 67), and execute an indirect program flow control instruction if the current processing mode is an unprivileged processing mode (“...indirect operating system calls...” Col. 12 Ln. 42 – 67).

***Response to Arguments***

Applicant's arguments filed 10/15/07 have been fully considered but they are not persuasive.

Applicant argues in substance that the Gorishek, IV prior art does not teach the step of determining a current processing mode of an executing software function.

The Examiner respectfully disagrees:

The Gorishek, IV prior art discloses a process for allowing non-native code to run in a computer system. The computer system includes a host processor and an emulation coprocessor. The host processor includes hardware configured to execute instructions defined by a host instruction set architecture (application program), while the emulation coprocessor includes hardware configured to execute instructions defined by a different instruction set architecture from the host instruction set architecture (the foreign instruction set architecture/foreign program). The host processor executes operating system code as well as application programs which are coded in the host instruction set architecture. Upon initiation of a foreign application program, the host processor communicates with the emulation coprocessor to cause the emulation coprocessor to execute the foreign application program. The current processing mode is determined by **examining the file format** of application program and if is determined that processing mode/file format is in accord with the host instruction set architecture a **normal** host process and the application program is executed, otherwise the (foreign) application program is executed **indirectly or via thunk/emulation coprocessor**. In this instance the application program in a privileged processing mode hence the

direct/normal execution while the foreign application program is an unprivileged processing mode hence the indirect/via thunk execution.

Also of note is that the claims do not have any indication that the current processing mode could not be determined by examining the executing software function?

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Anya whose telephone number is (571) 272-3757. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571) 272-3718. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles E Anya  
Examiner  
Art Unit 2194

cea.

  
WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER